

**RIGHTS OF EMPLOYEES AND WORKPLACE DISCRIMINATION PHENOMENON  
IN NIGERIA: LESSONS FROM UNITED STATE OF AMERICA**

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***Abstract***

*The rights of an employee are guaranteed and free from any form of discrimination. Despite the protection afforded by the relevant laws on labour, employment and productivity, some forms of discriminations still exist at the work place. The focus of this article is on the discriminations that inhere in employment and the rights of vulnerable individuals in the Nigeria workplace. The major objectives of this article is to identify the specific factors contributing to employment discrimination against vulnerable employees in Nigeria, such as age, gender, disability, ethnicity, religion and socio-economic background with a view to assessing the effectiveness of current measures and mechanisms in addressing employment discrimination in order to protect the rights of vulnerable employees in Nigeria. To achieve the aforementioned objective of the article, the doctrinal approach will be adopted. The authors will rely on texts, journal articles, case law, statutes, treaties and other international instruments on labour and employment in Nigeria with a view to drawing lessons from the United States of America. This article finds that vulnerable employees experienced discrimination in employment due to their personal characteristics such as race, ethnicity, gender, disability, age or sexual orientation. The article recommends the establishment of a dedicated body to investigate and resolve complaints of discrimination in employment at workplace in Nigeria. The article concludes that workplace discrimination is unhealthy and can affect the productivity of workers in Nigeria.*

***Keywords:*** *discrimination, workplace, employees, rights, jurisdiction.*

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## **Introduction**

Workplace discrimination continues to plague many workers, not only in Nigeria but the world at large. Persons could be abused because of their ethnicity, sex or religion. Even worse, if an employee leans on his religion convictions, he may not be employed and if already employed, may be transferred to a low-paying position. The rationale for the focus of this article on discrimination in employment in Nigeria is to determine the mechanisms to curb the inequality perpetuated by discriminatory practices at workplace in Nigeria. There is therefore the need to protect the rights of the vulnerable employees at workplaces in Nigeria. Despite this, there is no deliberate move by the Nigeria government to develop and enact anti-discrimination legislation to combat the menace of workplace discrimination in Nigeria. There is also no significant improvement in Nigeria's labour law to address discriminatory practices at workplace.

Discrimination is the unjust or prejudicial treatment of individuals or groups based on certain characteristic, such as age, race, gender, ethnicity, religion, sexual orientation, disability or other factors. It involves treating some certain categories of people less favourably or denying them equal opportunities solely because of their membership in a particular group. In order words, discrimination refers to the practice of treating individuals differently because of identifiable traits such as race, colour or sex, which reduces the equality of opportunities and treatment in employment or jobs. Although existing literature on the subject recognizes the discriminatory practices at workplace in Nigeria, but in this article, we have argued that there are dare consequences for the continuous practices of discrimination at workplace in Nigeria. It is argued that discriminatory practices would not only affect the morale of workers to the dedicated, it would damage their enthusiasm to work and by extension affect the country's productivity. Discriminatory practices which have the capacity to affect production may be the cause of food insecurity in Nigeria. This research is justified because it has the impetus to drive Nigeria enthusiasm towards enacting and strengthening Nigeria labour law with a view to eliminating discriminatory practices at workplace. This research is beneficiary to the reading public and Nigeria towards developing measures that could be deployed to addressing the issues of inequality and offer protection to vulnerable employees in Nigeria.

## **Concept of Discrimination**

Discrimination refers to differentiation, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction, or socio-economic origin that has the effect of negating another person's rights or limiting opportunities for or treating people unequally in the workplace or other settings.

Discrimination refers to the unjust or prejudicial treatment of individuals or groups based on certain characteristics, such as race, gender, ethnicity, religion, sexual orientation, disability, or other factors<sup>1</sup>. It involves treating people less favourably or denying them equal opportunities solely because of their membership in a particular group.

In other words, discrimination refers to the practice of treating individuals differently because of identifiable traits, such as race, colour, or sex, which reduces the equality of opportunity and treatment in employment and jobs. When people are treated differently based on personal traits that have no bearing on how well they can perform at work, this is known as discrimination<sup>2</sup>.

Discrimination refers to the unfair or unequal treatment of individuals or groups based on certain characteristics or attributes that are unrelated to their abilities or qualifications. It involves treating people differently or denying them opportunities, rights, or benefits based on factors such as race, gender, age, religion, disability, or sexual orientation.

Discrimination is also seen as unequal treatment of individuals or groups based on certain characteristics or attributes that are unrelated to their abilities or qualifications<sup>3</sup>. Discrimination is the act of unfairly treating individuals or groups based on their membership in a particular category. Discrimination occurs when individuals or groups are subjected to differential treatment or denied opportunities solely based on their race, ethnicity, gender, age, or other protected characteristics.<sup>4</sup>

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<sup>1</sup>Paula Braveman, Elaine Arkin, Tracy Orleans, and others, What is Health Equity? 'Behavioral Science and Policy', *Sage Journals* (2018) 4(1) 1. <[https://doi.org/10.1177237946151800400\\_02](https://doi.org/10.1177237946151800400_02)> accessed September 22<sup>nd</sup> 2023.

<sup>2</sup>E. Galanaki. The Decision to Adopt Personnel Selection System Innovations: Institutional and Political Factors'. *Human Resource Management Journal*, (2002) 12(3) 69.

<sup>3</sup>Blau Flancine, and M. Ferber. Discrimination and Labor Markets: Handbook of Labor Economics (2016) 4(2) 385.

<sup>4</sup>Braveman 'What is Health Equity?' (n.8) 7.

Article 2 of the UN Convention on the Rights of Persons with Disabilities<sup>5</sup> gives a detailed definition of discrimination on the basis of disabilities thus;

Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

A useful definition of non-discrimination is contained in Article 1(1)<sup>6</sup>, which provides that discrimination includes: Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation."

Thus, the right to equal treatment requires that all persons be treated equally before the law, without discrimination. The principle of equality and non-discrimination guarantees that those in equal circumstances are dealt with equally in law and practice. Discrimination is the unjust or prejudicial treatment of individuals or groups based on characteristics such as nationality, religion, disability, or sexual orientation.<sup>7</sup>

### **Various Types of Workplace Discrimination in Nigeria**

Discrimination can take two forms<sup>8</sup>. Direct or Indirect Discrimination.

Direct discrimination occurs when an employee is treated unfairly due to personal, physical, or social characteristics that are legally protected.<sup>9</sup>For instance, gender, sex, and marital status are common factors leading to direct discrimination An instance of this would be if an employer unfairly treats women based on societal stereotypes that portray them as unreliable employees

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<sup>5</sup> Article 2 of the UN Convention on the Rights of Persons with Disabilities.

<sup>6</sup> ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

<sup>7</sup> D. Sartain and M. Fine, *The Talent Management Handbook: Creating Organizational Excellence by Identifying, Developing, and Promoting the Best People*, (2<sup>nd</sup> ed. United State, McGraw-Hill Press, (2012).

<sup>8</sup> S. Hajian and J. Domingo-Ferrer, 'A Methodology for Direct and Indirect Discrimination Prevention in Data Mining, in IEEE Transactions on Knowledge and Data Engineering', *International Journal of Computer Science*, (2013) 25(7) 1445 <<https://doi: 10.1109/TKDE.2012.72>> accessed 21 Sept 2023

<sup>9</sup>Hajian 'A Methodology' (n.27) 12

due to their roles as homemakers.<sup>10</sup> This kind of bias is both a stereotype and an example of direct discrimination. This interpretation was upheld in the case *Imatu & Anor v. City of Cape Town*<sup>11</sup>. Generally, identifying direct discrimination is straightforward<sup>12</sup>, as it is linked to the grounds for unfair discrimination listed in section 6 of the EEA.<sup>13</sup>

Indirect discrimination refers to policies or practices that might not be overtly discriminatory based on the listed criteria but still result in discrimination against a particular group<sup>14</sup>. It occurs when treating seemingly unequal individuals equally has a negative impact on the less privileged. In the case of *Leonard Dingler Employee Representative Council v. Leonard Dingler (Pty) Ltd & Others*<sup>15</sup>, the Labor Court held that the employer unfairly engaged in indirect discrimination. This was due to the unequal retirement benefits offered to weekly and monthly salary earners, where weekly earners, who were predominantly black, received smaller contributions and were denied fund selection. The court ruled that this situation amounted to racial discrimination against black employees. The court held that the blacks were indirectly discriminated against based on their race.

### **Rights of Employees in Nigeria**

The term “worker's right” refers to a broad range of human rights, including the right to a decent wage, the freedom to form associations, access to equal opportunities, and protection against discrimination.<sup>16</sup> The right to privacy at work and other specific rights connected to the workplace include, among many others, workplace health and safety.<sup>17</sup> The most frequent intersection of business and human rights is in the area of worker's rights because of the link between companies, employees, and the government.<sup>18</sup> To address these issues, national and international instruments have been developed and are codified in national laws, international

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<sup>10</sup> Rebecca Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives*, (6th ed, Philadelphia, University of Pennsylvania Press 2010).

<sup>11</sup> (2005) 26 ILJ 1401 (LC).

<sup>12</sup> Section 6, Employment Equity Act No 55 of 1998.

<sup>13</sup> Landman Adolph A. The Anatomy of Disputes about Equal Pay for Equal Work', *South African Mercantile Law Journal* (2002) (14) 341.

<sup>14</sup> Adams Prassl Jeremias, Binns Reuben and Kelly Lyth Ais linn, Directly Discriminatory Algorithms', *The Modern Law Review*, (2023) 86(1) 144.

<sup>15</sup> (1998) 19 ILJ 858 (LC).

<sup>16</sup> Diane Frey, 'The Sustainable Development Goals and Human Rights' (2018)1st Ed.21

<sup>17</sup> S Ozturk, 'Employer's Liability Regarding Domestic Workers and their Occupational Health and Safety in Turkey', *Journal of Business Economics and Finance*, (2018) 7 (4), 359<<https://doi.org/10.17261/Pressacademia.2018.996>>accessed 20<sup>th</sup>September 2023.

<sup>18</sup> A. Rasche, and S. Waddock, 'The UN Guiding Principles Corporate Social Responsibility Research', *Business and Human Rights Journal*, (2021) 6(2) 227<<https://doi.org/10.1017/bhj.2021.2>>accessed 20 September 2023

labour conventions, and ILO recommendations. These instruments grant workers certain rights as workers while also granting them certain rights as citizens under constitutional provisions. The rights aim to guarantee secure, healthy, fair, and equitable working circumstances. However, many employers transgress these fundamental rights because they put their profits ahead of their employees.<sup>19</sup>

## **Legal Framework on Anti-Workplace Discrimination in Nigeria**

### **a. The Constitution**

The Constitution of Nigeria is the principal law in Nigeria.<sup>20</sup> The Constitution is a contract between all Nigerians; this could be inferred from the preamble of the Constitution which provides:

We the people of the Federal Republic of Nigeria, having firmly and solemnly resolved, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding and to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people, do hereby make, enact and give to ourselves the following Constitution.

The Constitution is also a contract between the Nigerian government and the people of Nigeria.<sup>21</sup> Chapter two of the Constitution provides for the obligations of the state to the people. This chapter is evidence of the social contract that exists between the Nigerian government and the Nigerian people.

Chapter four of the Constitution deals specifically with fundamental human rights which includes right to life, fair hearing, peaceful assembly and association, freedom from discrimination, among others.

Section 42<sup>22</sup> further provides:

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<sup>19</sup>IduborEnaruna and M. Oisamoje, 'An Exploration of Health and Safety Management Issues in Nigeria's' *Effort to Scientific Journal*, (2013) 9(12) 15

<sup>20</sup>Constitution of the federal republic of Nigeria (1999 as amended)

<sup>21</sup>S 1(1) of the Constitution of the Federal Republic of Nigeria (1999 as amended)

<sup>22</sup>S 1(1) of the Constitution of the Federal Republic of Nigeria (1999 as amended)

- 1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person;
  - (a) be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject.
  - (b) be accorded either expressly by, or practical application of, any law in force in or in the Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria or other communities, ethnic groups, places of origin, sex, religious or political opinions.
- 2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

This section of the constitution prevents any form of discrimination to any person who is a citizen of Nigeria, in any form or way by reason of his sex, place of origin, religion, or tribe. This covers for discrimination in the workplace as well.

Section 15(2)<sup>23</sup> also provides that national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

Section 17<sup>24</sup> guarantees the equality of all Nigerians under the constitution and the protection of their dignity, thus preventing discrimination in the workplace. It provides thus:

In furtherance of the social order -

1. every citizen shall have equality of rights, obligations and opportunities before the law
2. the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;
3. The state shall direct its policy towards ensuring that -
  12. all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.

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<sup>23</sup>S 15(2) of the Constitution of the Federal Republic of Nigeria (1999 as amended)

<sup>24</sup>S 17 of the Constitution of the Federal Republic of Nigeria (1999 as amended)

(e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever.

Section 34 of the 1999 Constitution of the Federal Republic of Nigeria has provided against forced labour. It provides that:

- (1) Every individual is entitled to respect for the dignity of his person, and accordingly -
- v. no person shall be subject to torture or to inhuman or degrading treatment;
  - vi. no person shall be held in slavery or servitude; and
  - vii. no person shall be required to perform forced or compulsory labour.

The Nigeria Constitution recognizes the duty of the state to ensure equal pay for equal work without discrimination on the account of sex or any other ground.<sup>25</sup>

Flowing from the enlisted sections, it can be said that the constitution has guaranteed the enhancement of fundamental human rights, the equality of rights of all citizens, preservation of human dignity, freedom from oppression and discrimination of any sort, workplace inclusive.

#### **b) Labour Act**

The Labour Act<sup>26</sup> is the primary legislation governing Labour and employment in Nigeria. It covers various aspects of employment, including conditions of employment, contracts, wages, working hours, leave entitlements, termination of employment, and trade unions. The rights of Workers in Nigeria under the Labour Act include but not limited to:

1. Right to a Written Contract of Employment: Under the Labour Act, every employee is entitled to receive a written contract of employment within three months of starting a new job. The contract should contain essential terms and conditions of employment, such as the nature of the employment, job description, remuneration, working hours, and termination conditions.
2. Right to Fair Wages: The Labour Act sets the minimum wage and provides for timely payment of wages. It ensures that employees are paid at regular intervals and in legal tender.

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<sup>25</sup>S 17(3) Constitution of the Federal Republic of Nigeria 1999, (as amended).

<sup>26</sup>Chap 198, Laws of the Federation of Nigeria 1990.



3. Right to Rest and Leave: Employees in Nigeria are entitled to rest periods during the workday and rest days during the week. Additionally, the Act provides for annual leave entitlements based on the duration of service.
4. Protection Against Unfair Dismissal: The Act provides some protection against unfair dismissal by stipulating conditions under which an employer can terminate an employee's contract without proper cause.
5. Right to equal pay for equal work: Nigeria has ratified the Discrimination (Employment and Occupation) Convention,<sup>27</sup> which prohibits discrimination in employment, including discrimination in remuneration.
6. Equal Opportunities: The Labour Act prohibits discrimination in employment based on sex, religion, ethnic group, or political affiliation. Every worker has the right to equal opportunities in the workplace.
7. Right to protection against unfair dismissal: The Labour Act sets out the conditions under which an employer can terminate an employee's contract and provides protection against unfair dismissal or termination without just cause.

The provision for forced Labour under the Nigeria law is provided under Section 73.<sup>28</sup> It provides:

Any person who requires any other person, or permits any other person to be required, to perform forced labour contrary to the Constitution<sup>29</sup> shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N1,000 or to imprisonment for a term not exceeding two years, or to both.

Section 80 Labour Act<sup>30</sup> further states that Jurisdiction to hear complaints under section 81,<sup>31</sup> the Labour Act resides on the magistrate court.

Where an employee believes his rights have been breached, he can bring up an action against this breach in court. Section 81 Labour Act also provides that:

(1) Where

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<sup>27</sup> Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

<sup>28</sup> S 73 Labour Act 2004

<sup>29</sup> S 34 (1) (c) of the Constitution of the Federal Republic of Nigeria 1999, (as amended)

<sup>30</sup> S 80 Labour Act, 2004.

<sup>31</sup> Ibid.

(a) an employer or worker neglects or refuses to fulfil a contract; or  
(b) any question, difference or dispute arises as to the rights or liabilities of a party to a contract or touching any misconduct, neglect, ill-treatment or injury to the person or property of a party to a contract, any party to the contract feeling himself aggrieved may make complaint to a court having jurisdiction, which may thereupon issue a summons to the party complained against the aggrieved party, the court, the party complained against and the complaint being hereafter in this section and in sections 82 to 85 of this Act referred to as “the Complainant”, “the court”, “the respondent” and “the complainant” respectively.

**(c) Workplace/Employees Compensation Act 2010**

**Section 73 of the Act defines an** employee as a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Governments and any of the government agencies and in the formal and informal sectors of the economy. By this provision, the dichotomy earlier created by the defunct Workmen Compensation Act between contract of service and contract for service has been obviated. In essence, the Workplace / Employee Compensation Act 2010 was enacted to eliminate any form of discriminatory practices at the workplace.

**Other Relevant Laws and Regulations on Equality and Non-Discrimination**

**(a) Universal Declaration on Human Rights**

A variety of human rights agreements and treaties, including articles 23 and 24, 1948 Universal Declaration on Human Rights, specify the rights of workers at the worldwide level.

Article 23:

- a. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- b. Everyone, without any discrimination, has the right to equal pay for equal work.
- c. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 24 states that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

The Federal Republic of Nigeria is a member of the United Nations and the African Union. It has ratified many UN Human Rights Conventions and thus has made binding international commitments to adhere to the standards laid down in these universal human rights documents. Nigeria, besides from ratifying and adopting the UDHR, has gone ahead to sign on to several other international human rights covenants and protocols. It is noteworthy that the UDHR is applicable to all people in all countries around the world. Following the prohibition of discrimination based on race, sex, language and religion in the Charter of the United Nations, the adoption of the Universal Declaration of Human Rights in 1948 became the next important step in the legal consolidation of the principle of equality before the law and the resultant prohibition of discrimination.

Article 1 of the Universal Declaration,<sup>32</sup>proclaims that “all human are born free and equal in dignity and rights”. While according to Article 2 of the UDHR provides:<sup>33</sup>

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

With regard to the right of equality,

Article 71<sup>34</sup> provides:

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.

#### **(b) The African Charter on Human and People's Right 1981**

The African Charter on Human and People's Right 1981<sup>35</sup>recognizes the rights to work under equitable and satisfactory conditions, and the rights to equal pay for equal work.

#### **(c) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979**

Article 3 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, which has been ratified in Nigeria provides against the discrimination of Women. It provides thus:

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<sup>32</sup>Art 1, Universal Declaration of Human Rights (UDHR)1948

<sup>33</sup>Art 2 Universal Declaration of Human Rights (UDHR)1948

<sup>34</sup>Art 7, Universal Declaration of Human Rights (UDHR)

<sup>35</sup>Art 5 of the African Charter on Human and People's 1981.

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.<sup>36</sup>

**(d) European Convention on Human Rights (ECHR) 1953**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>37</sup>

**(e) The International Labour Organization (ILO)**

Nigeria has ratified the International Labour Organisation (ILO) Convention on Discrimination (Employment and Occupation) of 1958. The idea that all employment decisions are made based on an individual's capacity to perform a job, regardless of personal attributes of that individual that are unrelated to the needs of the job, is the foundation of equal employment and non-discrimination.<sup>38</sup>

**Article 5;**

States that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. The States shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.<sup>39</sup>

The Convention on the Rights of Persons with Disabilities<sup>40</sup> provides the general principles of the convention among which are hinged on: Respect for inherent dignity; individual autonomy including the freedom to make one's own choices, and independence of persons; non-

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<sup>36</sup>Art 3 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

<sup>37</sup>Art 14 of the European Convention on Human Rights (ECHR) 1953.

<sup>38</sup>Ideh Anthony, OkwyOkpala, and Christopher Chidi, 'Towards Eliminating Discriminatory Employment Practices in Nigerian Organisations', *LASU Journal of Employment Relations and Human Resource Management*, (2020) 2(1) 75.

<sup>39</sup>Waddington Lisa, 'Fine-tuning non-discrimination law: Exceptions and justifications allowing for differential treatment on the ground of disability', *International Journal of Discrimination and the Law*, (2015) 15(1) 11.

<sup>40</sup>Art 3 of the UN Convention on the Rights of Persons with Disabilities 2006.

discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women.

### **Legal Framework for Workplace Anti-Discrimination in United States**

The US Equal Employment Opportunity Commission has provided laws for the benefits of employees<sup>41</sup> who may be seen to be easily harassed because of their position and the fact that they have superiors who can at any time, seek their removal from work or discriminate them, demote or harass them. These laws have been put in place to see that an employee do not suffer at the mercy of his employer by reasons of his age, race, religion, right, colour, sex, disabilities and so on.

#### **(a) The Occupational Health and Safety Laws in the Workplace 1970**

The Act was enacted to ensure the safety and healthy working conditions of employees. The Act requires employers to provide employees with an environment free from recognised hazards and infectious agents, excessive noise levels, mechanical dangers, heat or cold stress, and conditions that are causing or are likely to cause death or serious physical harm to employees. It will therefore amount to discrimination of some certain categories if workers are constantly exposed to harmful conditions of environment while others enjoys protection. The implication is that the Act enjoins every employer of labour to provide a healthy environment for all categories of workers irrespective of race, colour, class, sex, religion, group, age, ethnicity or political opinion.

#### **(b) Discrimination against Persons with Disabilities Act.<sup>42</sup> (USA)**

This Act prohibits slavery and involuntary servitude further stating that any form of discrimination may be considered an incident of slavery or involuntary servitude and thus be liable to an action under this amendment.<sup>43</sup> While the Fourteenth Amendment guarantees equal protection of the law for all citizens.

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<sup>41</sup>The Civil Rights Act of 1866 & 1871; The Equal Pay Act of 1963; Title VII of the Civil Rights Act of 1964; The Civil Rights Act of 1991; The Age Discrimination in Employment Act of 1967 (ADEA); The Americans with Disabilities Act of 1990 (ADA); Executive Orders 11246, 11375, and 11478; Discrimination Against Persons with Disabilities Act 2018.

<sup>42</sup>Discrimination Against Persons with Disabilities Act 2018.

<sup>43</sup>Thirteenth Amendment, Discrimination Against Persons with Disabilities Act 2018.

**(c) The Civil Rights Act of 1866 & 1871**

The Civil right Act<sup>44</sup> grants all citizens the right to make and enforce contracts for employment. It also grants all citizens the right to sue in a federal Court if they have been deprived of any rights or privileges guaranteed under the Constitution or other laws.

**(d) Title VII of The Civil Rights Act of 1964**

This Act prohibits discrimination on the basis of race, colour, religion, sex or national origin all aspects of employment. It also provides against unlawful employment services establishes what unlawful employment practices entail. It provides that:

It shall be an unlawful employment practice for an employer... to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms,<sup>45</sup> conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

**(e) Equal Pay Act of 1963**

This Act requires that men and women working in and for the same establishment must be paid the same rate for work that is equal to their skill, responsibility or working conditions. That is, there must be no discrimination against sex. The Equal Pay Act of 1963 is a United States Labour Law amending the Fair Labour Standards Act aimed at abolishing wage disparity based on sex. Section 3(d)(1) of the Act provides that no employer having employees subject to any provisions of this section shall discriminate within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions except where such payment is made pursuant to: (i) seniority system, (ii) a merit system, (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex, provided that an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

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<sup>44</sup>The Civil Rights Act of 1866 & 1871.

<sup>45</sup>S 6 of the Equal Pay Act of 1963.

**(f) The Civil Rights Act of 1991**

It provides for the expansion of remedies in discrimination cases. Individuals, who feel discriminated or think they are discriminated, can ask for damages. The Civil Rights Act also provide that an employer is guilty of discrimination if it can be shown that a prohibited consideration was a motivating factor in giving out employment but if the employer can show that same decision would have been reached even without the unlawful consideration, damages would not be given against him.<sup>46</sup> The Act also made it unlawful to adjust the scores or use different score sheet otherwise altering the results of employment rated tests on the basis of race, colour, religion, sex or national origin.

**(g) The Americans with Disabilities Act of 1990 (ADA)<sup>47</sup>**

As a general rule, this Act prohibits an employer from discriminating against a qualified individual with a disability. The Americans with Disabilities Act of 1990<sup>48</sup> is a civil rights Law that prohibits discrimination based on disability. It affords similar protections against discrimination to Americans with disabilities as the Civil Right of 1964, which made discrimination based on race, religion, sex, natural origin, and other characteristics illegal. The Act also requires covered employers to provide reasonable accommodations to employees with disability and imposes accessibility requirements on public accommodations.

**Case Law on Anti-Workplace Discrimination in the United States**

The case of *Burlington Northern & Santa Fe railway v. White*<sup>49</sup> is relatable to our discussion and it espouses the law against discrimination. The facts of that case are as follows: In June 1997, Sheila White was the only woman working in the Maintenance of Way Department at Burlington Northern & Santa Fe (BNSF)'s Tennessee Yard. When she applied for the job at BNSF, her previous experience operating forklifts was noted by Marvin Brown, her interviewer at BNSF. White was hired as a "track labourer", a job that involves removing and replacing track components, transporting track material, cutting brush, and clearing litter and cargo spillage from the right-of-way. Soon after White arrived on the job, she was assigned to operate the forklift. While she also performed some of the other track labourer tasks, operating the forklift was White's primary responsibility.

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<sup>46</sup>S 302 of The Civil Rights Act of 1991.

<sup>47</sup>Title 5 of the Americans with Disabilities Act of 1990.

<sup>48</sup>42 USC Section 12101

<sup>49</sup>(2006) 548 U.S. 53

In September 1997, White complained to BNSF officials that her immediate supervisor, Bill Joiner, had repeatedly told her that women should not be working in the Maintenance of Way Department. White said that Joiner had also made insulting and inappropriate remarks to her in front of her male colleagues. After an internal investigation, Burlington suspended Joiner for 10 days and ordered him to attend a sexual-harassment training session.<sup>50</sup>

On September 26 1997, Brown told White about Joiner's discipline. At the same time, he told White that he was removing her from forklift duty and assigning her to perform only standard track labourer tasks. Brown explained that the reassignment reflected co-worker's complaints that, in fairness, a more senior worker should have the less arduous and cleaner job of forklift operator. On October 10, 1997, White filed a complaint with the Equal Employment Opportunity Commission (EEOC). She claimed that the reassignment of her duties amounted to unlawful gender-based discrimination and retaliation for her having earlier complained about Joiner. In early December 1997, White filed a second retaliation charge with the Commission, claiming that Brown had placed her under surveillance and was monitoring her daily activities.<sup>51</sup>

A few days later, White and her immediate supervisor, Percy Sharkey, disagreed about which truck should transport White from one location to another. Some aspects of this conversation were disputed, however later that day Sharkey told Brown that White had been insubordinate. Brown immediately suspended White without pay. White invoked internal grievance procedures. Those procedures led Burlington to conclude that White had not been insubordinate. Burlington reinstated White to her position and awarded her back pay for the 37 days she was suspended. White filed an additional retaliation charge with the EEOC based on the suspension.

Employer actions that discriminate against an employee (or job applicant) because he has opposed a practice that Title VII forbids or has made a charge, testified, assisted, or participated in a Title VII "investigation, proceeding, or hearing is forbidden."<sup>52</sup>

After exhausting administrative remedies, White filed suit in federal court, where a jury rejected her claims of sex discrimination but awarded her damages of \$43,000 after finding that she had been retaliated against in violation of Title VII.<sup>53</sup>

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<sup>50</sup>Ibid.

<sup>51</sup>That charge was mailed to Brown on December 8, 1997

<sup>52</sup>The Anti-Retaliation Provision of Title VII of the Civil Rights Act of 1964

<sup>53</sup>Title VII, Civil Rights Act of 1964



On appeal, BNSF argued that White had not suffered "adverse employment action," and therefore could not bring the suit, because she had not been fired, demoted, denied a promotion, or denied wages. In November 2002, a panel of the Sixth Circuit Court of Appeals initially agreed, where Judge James S. Gwin was joined by Judge Robert B. Krupansky, over the dissent of Judge Eric L. Clay. The case was reheard however, and, in April 2004, the full court found for White, holding that the suspension without pay even if back pay was eventually awarded - was an "adverse employment action," as was the change of responsibilities within the same job category. On June 22, 2006, the Supreme Court delivered judgment unanimously in favour of Sheila White. It affirmed the decision of the Sixth Circuit.

In this case the standard for retaliation against a sexual harassment or discrimination complainant was revised to include any adverse employment decision or treatment that would be likely to dissuade a reasonable worker from making or supporting a charge of discrimination.

### **Comparative Intercourse of the Rights of Employees in Nigeria with the Position in the United State**

The Equal Employment Opportunity Act (EEOA) of 1964 is a federal law that prohibits employment discrimination based on race, colour, religion, sex, or national origin.<sup>54</sup> It was enacted as Title VII of the Civil Rights Act of 1964 and was amended in 1972 to include protections for employees with disabilities and in 1991 to include protections for employees based on age.<sup>55</sup>

The Equal Employment Opportunity Act (EEOA)<sup>56</sup> in the United States and Section 42 of the Nigerian Constitution<sup>57</sup> and the Labour law 2004 of Nigeria are laws that prohibit discrimination in employment on the basis of certain protected characteristics. However, there are some key differences between the two laws.

The EEOA is a federal law that applies to all employers with 15 or more employees. It prohibits discrimination on the basis of race, colour, religion, sex, national origin, age (40 or over), and disability. The EEOA also prohibits retaliation against employees who file discrimination

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<sup>54</sup>Lynch Mary Kathryn, 'The Equal Employment Opportunity Commission: Comments on the Agency and its Role in Employment Discrimination Law', *Georgia Journal of international law and comparative law*, (1990) (20) 89.

<sup>55</sup>Burstein Paul and Margo MacLeod, 'Prohibiting employment discrimination: ideas and politics in the congressional debate over equal employment opportunity legislation', *American Journal of Sociology* (1980) 86(3) 512.

<sup>56</sup>The Equal Employment Opportunity Act (EEOA) of 1964.

<sup>57</sup>S 42 of the Constitution of the Federal Republic of Nigeria 1999(as amended).

complaints. Section 42 of the Nigerian Constitution prohibits discrimination on the basis of race, religion, ethnicity, place of origin, sex, marital status, political opinion, or conscience. It also prohibits discrimination against persons with disabilities. However, Section 42 does not apply to all employers. It only applies to employers who are subject to the Constitution, such as the government and its agencies.

Another key difference between the EEOA and Section 42 is that the EEOA is enforced by the Equal Employment Opportunity Commission (EEOC). The EEOC is a federal agency that has the power to investigate discrimination complaints, file lawsuits on behalf of victims of discrimination, and issue regulations to interpret and enforce the EEOA,<sup>58</sup> Section 42,<sup>59</sup> on the other hand, is enforced by the Nigerian courts.

The EEOA provides more comprehensive protection against discrimination in employment than Section 42.<sup>60</sup> However, Section 42 applies to a wider range of employers.

The EEOA prohibits discrimination in all aspects of employment, including hiring, firing, promotions, compensation, job assignments, training, and benefits. To prove a claim of employment discrimination under the EEOA, an employee must show that:<sup>61</sup>

- (a) They are a member of a protected class;
- (b) They were subjected to an adverse employment action; and
- (c) The adverse employment action was motivated by their membership in a protected class.

Employers can defend against claims of employment discrimination by showing that they had a legitimate, non-discriminatory reason for the adverse employment action.<sup>62</sup> The EEOA has had a significant impact on the American workplace. It has helped to level the playing field for all workers and has created a fairer and more just workplace.<sup>63</sup>

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<sup>58</sup>Occhialino Noel and Daniel Vail, 'Why the EEOC (still) Matters', *Hofstra Labour and Employment Law Journal* (2004) (22) 671.

<sup>59</sup>S 42 of the Constitution of the Federal Republic of Nigeria 1999(as amended).

<sup>60</sup>Ibid.

<sup>61</sup>Rothenberg Jessica and Daniel Gardner, 'Protecting Older Workers: The Failure of the Age Discrimination in Employment Act of 1967', *Journal of Sociology and Social Welfare* (2011) (38) 9.

<sup>62</sup>Mukherjee Dhruva, 'The Dichotomy Between Independent and Cumulative Reasons for an Adverse Action: A New Defense For Employers to Claims of Workplace Discrimination', *Am. U. Labor and Employment*, LF (2015) (5) i.

<sup>63</sup>Cash Karen and George Gray, 'A Framework for Accommodating Religion and Spirituality in the Workplace', *Academy of Management Perspectives Journal* (2000) 14(3) 124.

Nigeria also has laws prohibiting discrimination in employment, but they are less comprehensive than those in the USA.<sup>64</sup> The Nigerian Constitution prohibits discrimination on the basis of tribe, ethnicity, religion, or political opinion.<sup>65</sup> However, there is no specific law prohibiting discrimination on the basis of other protected characteristics, such as age, disability, or sexual orientation. The main difference between the laws against discrimination in employment in the USA and Nigeria is the scope of protection. The US laws cover a wide range of protected characteristics, while the Nigerian laws are less comprehensive.<sup>66</sup>

Another difference is the level of enforcement. The US EEOC is a well-funded and experienced agency with a strong track record of enforcing anti-discrimination laws.<sup>67</sup> In contrast, the Nigerian government has limited resources to enforce its anti-discrimination laws.<sup>68</sup>

The Labour Act of Nigeria is the primary law governing employment relationships in Nigeria.<sup>69</sup> The Act contains a number of provisions that prohibit discrimination in employment, but these provisions are not as comprehensive as the anti-discrimination laws in the USA.

Section 18 of the Labour Act<sup>70</sup> prohibits discrimination in employment on the basis of tribe, ethnicity, religion, or political opinion. This means that employers cannot refuse to hire someone, fire someone, or otherwise discriminate against someone on the basis of any of these protected characteristics.

Section 20 of the Labour Act<sup>71</sup> prohibits discrimination in employment on the basis of disability. This means that employers cannot refuse to hire someone, fire someone, or otherwise discriminate against someone on the basis of their disability.

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<sup>64</sup>The HIV and AIDS (Anti-discrimination) Act 2014 and The Discrimination against Persons with Disabilities (Prohibition) Act, 2018.

<sup>65</sup>S 42 of the Constitution of the Federal Republic of Nigeria 1999(as amended).

<sup>66</sup>Adejuge Adeyinka and Adedolapo Adejuge, 'Women and Discrimination in the Workplace: A Nigerian Perspective', SSRN 3244971 (2018).

<sup>67</sup>Mehri Cyrus and Ellen Eardley, '21st Century Tools for Advancing Equal Opportunity: Recommendations for Administration', *Advance Journal* (2009) (3) 131.

<sup>68</sup>Dormady Valerie, 'Status of the Convention on the Elimination of All Forms of Discrimination against Women ) in 1998', *The International Lawyer* (1999) 637.

<sup>69</sup>Nwokpoku Joseph, 'Nigerian Labour Laws: Issues and Challenges', *World Applied Sciences Journal* (2018) 36 (1) 47.

<sup>70</sup>S 18 of the Labour Act 2004.

<sup>71</sup>S 20 of the Labour Act 2004.

However, the Labour Act does not prohibit discrimination on the basis of other protected characteristics, such as age, sex, or sexual orientation. This means that employers can legally discriminate against employees or applicants on the basis of these characteristics.

Another difference between the two laws is that the EEOA applies to all employers with 15 or employees,<sup>72</sup> while the Nigerian labour law applies to all employers with 50 or more employees. Additionally, the EEOA requires employers to take affirmative action to ensure equal employment opportunity for all employees. Affirmative action is a set of policies and practices designed to increase the number of women and minorities in the workforce. The Nigerian labour law does not require employers to take affirmative action.

In addition, the Labour Act does not provide for a strong enforcement mechanism for its antidiscrimination provisions. The National Industrial Court of Nigeria has jurisdiction to hear discrimination cases,<sup>73</sup> but the court is often overwhelmed with cases and can be slow to adjudicate on them. As a result of these weaknesses, the Labour Act does not provide adequate protection against discrimination in employment in Nigeria.

The EEOA is a living law that continues to evolve to meet the changing needs of the workplace. The law is essential to ensuring that all workers have the opportunity to succeed and thrive.

Finally, the US laws provide for more severe penalties for employers who violate them. For example, the US EEOC can order employers to pay back pay, damages, and other compensation to victims of discrimination. In Nigeria, the penalties for violating anti-discrimination laws are much less severe.

### **Lessons from the America Position**

The America's Labours Laws tend to protect fundamental human rights with respect to various areas of practice, wages, employment discrimination, freedom of association and right to family life. In this sub heading, the lessons derived from these laws would be expatiated.<sup>74</sup>

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<sup>72</sup>Bowe Frank, et al., 'Workplace Discrimination, Deafness and Hearing Impairment', *The National EEOC ADA Research Project* (2005) 25 (1) 19.

<sup>73</sup>Busayo Kemisola and Akanle Oluwaseun, 'Unfair Labour Practices in Industrial Relations in Nigeria and the Role of the National Industrial Court', *Journal Law Policy and Globalization* (2022) (119) 111.

<sup>74</sup>Julie Olajumoke Coker, et al, 'The Impact of Labour Laws on Fundamental Human Rights in the Workplace: A Comparative Analysis Between Nigeria and the United States', *Social Values and Society (SVS)* 5(2) (2023), 54-58.

**(a) Wages**

As demonstrated above, the Nigeria labour laws favour the idea of minimum wage which is encouraging. But it does not look at the adequacy of the minimum wage whether it reflect the economic realities of the country. In other words, minimum wage does not reflect the required living wage for the employer which could have a negative impact on the right to privacy of the Nigerian workers. Under the United States Labour Laws, particular the fair labour standards Act, wages are necessary, such as housing, food and other necessity, if this idea of wage determination is imbibed in Nigeria, at least Nigerian workers would be able to live life beyond the poverty line.

**(b) Employment Discrimination**

Under the United States Civil Right Act and the American with Disabilities Act, no American is expected to be discriminated against on the ground of sex, race, nationality, or disability with respect to employment. It is unlawful for an employer to refuse to give a person job on any of the grounds stipulated above or expel any on these grounds. Under the Nigerian law, the discriminatory employment is still encouraged by the laws, that is a woman is not allowed under the law to engage in night work or underground work, even if she is qualified.

**(c) Freedom of Association**

The United States encourages collective bargaining and encourages parties to trade dispute to engage in it under its National Labour Relations Act by encouraging labours to form association to protect their interest. However, in Nigeria such labour association could trample upon and tear apart by the government with the connivance of the labour law.

For example, the Trade Union Act gives the President the power to prescribe any trade union. This is not a good law for the protection of the right of employee to freedom of association in Nigeria.

**(d) Right to Family Life**

Right to family life includes maintaining and taking care of the family. Workers are busy people who may be buried in the service to the employer with little or no attention to their family. The United States of America recognizes this and provides that 12 workweeks unpaid leave should be

granted to the employee in order to take care of his family. This is an adorable provision to ensure that family life of an employee is not endangered because of his service to his employer. In the Nigeria labour law, no such leave exists. This article suggests that in order to protect the family life of an employee, such leave should be recognized, however, with the addition, unlike the United States, that a certain percentage of the employee should be paid to him during such leave in order to cater for the needs of his family.

### **Conclusion**

The Constitution of Nigeria prohibits discrimination in employment on the basis of tribe, ethnicity, religion, or political opinion. However, it does not explicitly prohibit discrimination on the basis of other characteristics, such as age, disability, or sexual orientation. There are a few other laws in Nigeria that prohibit discrimination in employment on the basis of certain characteristics, but these laws are limited in scope. Overall, the Constitution of Nigeria provides some protection against discrimination in employment, but there are many gaps in the law. The EEOA provides more comprehensive and stronger protection against employment discrimination than the Nigerian labour law. This is because the EEOA covers a wider range of protected characteristics, is more strictly enforced, and provides for more severe penalties for employers who violate it. It is important to note that the Nigerian labour law is still under development, and it is possible that it will be amended in the future to provide more comprehensive protection against employment discrimination. The Labour Act of Nigeria contains a number of provisions that prohibit discrimination in employment, but these provisions are not as comprehensive as the anti-discrimination laws in the USA. The Nigerian government should take steps to strengthen the Labour Act's anti-discrimination provisions to provide better protection against discrimination in employment for all Nigerians.